IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 801 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHULABHAI GOKULDAS DARJI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
NOTICE SERVED for Appellant(s) : 1,MR KB ANANDJIWALA for Appellant(s) : 1,
Ms. Archana Raval, addl.PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 07/08/2007

ORAL JUDGMENT

1. By the judgment and order dated 30.8.1996 passed by the Special Judge, Ahmedabad (Rural),

Ahmedabad in Special (ACB) Case No.9 of 1990, the appellant was convicted for the offences punishable under section 13(1)(d)(ii) read with section 13 (2) and section 7 of the Prevention of Corruption Act, 1988 and sentenced to suffer one year simple imprisonment and a fine of Rs.5000/-, in default, simple imprisonment for 2 months' for offence under to section 13(1)(d)(ii) read with section 13 (2) of the Act. (for short, “the Act”). The appellant was also convicted for 6 months' simple imprisonment and to pay fine of Rs. 5,000/-, in default, simple imprisonment for two months for the offence under section 7 of the Act. The above sentences were ordered to run concurrently.

2. The appellant, being aggrieved by the said judgment and order of conviction and sentence of the learned Special Judge, Ahmedabad (Rural), carried the matter in appeal before this Court. This court, (Coram: A.N. Divecha, J.) (as He then was), by order dated 1.10.1996, dismissed the appeal. Against the said order, the appellant has filed Appeal being Criminal Appeal No.242 of 1997 before

the Hon'ble Supreme Court. The Supreme Court, vide its order dated 6.11.2003, allowed the appeal, set aside the order of the High Court and remitted the matter to the High Court to restore the appeal to its original file with a direction to consider the matter afresh in accordance with law within six months, after affording due opportunities to both the parties. Accordingly the appeal was placed before this court (Coram: Hon'ble Mr Justice S.R. Brahmbhatt). The appeal was admitted by that court and 15 days' time was granted to the office for preparation of the paper book. That is how the Registry of the High Court, after going through the procedure and after obtaining orders from the Hon'ble The Chief Justice, placed this appeal before this court for final disposal.

The facts necessary for disposal of the present appeal are as under:

3. The complainant-Somji Chhaganbhai Patel is son of Chhaganbhai Manibhai Patel. Chhaganbhai, who was originally resident of Kachchh District,

purchased two plots of agricultural land bearing survey No.227 and 231 in the sim of Dehgam, after obtaining necessary permission from the competent authority. As they were farmers not residents of Dehgam, two tenancy cases bearing No. 6069 of 1984 and 6070 of 1984 were registered under section 84[C] of the Bombay Tenancy and Agricultural Lands Act, 1948 read with section 63 and 64 of the said Act. Both these cases were pending before the Mamlatdar and Krishi Panch, Dehgam.

4. The present appellant-accused was discharging his duties as Mamlatdar and Krishi Panch, Dehgam. He took charge as aforesaid on 15.2.1989 from his predecessor Mr Bhavsar. After taking charge of the office as Mamlatdar and Krishi Panch, he issued notices regarding all the pending cases. In the Tenancy cases against Chhaganbhai also notices were issued to remain present on 1.9.1989. Chhaganbhai could not remain present on 1.9.1989. Therefore, another notice was sent by the accused to remain present on 15.9.1989. As Chhaganbhai, father of the complainant is very aged

person and is physically unfit, the complainant, who is looking after the agricultural work and the pending cases, remained present on 15.9.1989 with one Devram Premji, who is neighbour of the complainant whose agricultural land is also situated near the land of the complainant. The accused made enquiry regarding the case and the complainant informed him that, as his father is very old and physically unfit, he could not come in the office and, hence, he represents his father and that for assistance, he brought his neighbour Devram. The accused demanded the documents pertaining to the land. The complainant produced xerox copies of the documents. It is the case of the prosecution that, the witness Devrambhai told the accused that false case has been filed against the complainant and hence the cases should be disposed of. The accused then told the complainant and Devrambhai that he would find out a way to dispose of the cases and for that, the complainant has to pay Rs. 1000/- for passing order in favour of the complainant. The complainant told the accused that he does not have money at that time and after some days he will

pay the money. After 10 days, the complainant again went to the office of the accused. The accused reiterated his demand of money and assured that if the money is given, the work of the complainant will be done. The complainant told him that Rs. 1000/- is a big amount and asked him to reduce some amount, as he does not have any income as it was not harvesting/crop yielding season. The accused was not ready to reduce the amount and insisted for Rs.1000/-. After the complainant agreeing to give the money within four days, on 15.9.1989, statement of Chhaganbhai was recorded and signature of Somji-complainant was taken below the statement in the name of Chhaganbhai. The complainant has given copy of the order passed by the Dy.Collector and copies of the documents pertaining to his case. This time also the accused made it clear that he should go to his office on 25.9.1989 with the demanded money and only thereafter he will pass necessary orders in favour of the complainant. The complainant was not willing to pay the amount of Rs.1000/- as bribe. Therefore, the complainant along with witness Devrambhai went to the office of the ACB police

station, Ahmedabad and lodged complaint against the present appellant-accused. The complainant produced Rs.1000/- to be given as bribe before ACB Inspector. The process to lay a trap against the accused was initiated. The ACB officials advised them to fix the date, amount and the name of the person to whom the amount is to be paid and to bring the amount in denomination of Rs.100/- Accordingly on 25.9.1989, the complainant and Devrambhai went to the office of the ACB. Two panch witnesses were called and the complainant was introduced to the panch witnesses. Thereupon demonstration of anthracene powder was made. The notes were smeared with anthracene powder and they were shown in ordinary light as well as in ultra violet lamp. In ultra violet lamp when the notes were seen, the same were showing light blue shining marks. Thereafter preliminary panchnama was drawn. The notes were kept in the rear trouser pocket of the complainant and he was instructed to hand over the notes, if demanded by the accused. He was also instructed that till he demands money, he should not hand it over to the accused. The complainant was

further instructed that when the accused accepts the amount, he may signal to the members of the raiding party by keeping his hand on his head. The raiding party with the complainant, his advisor/witness Devrambhai and the panchas left for Dehgam. They stopped at the S.T. Stand of Dehgam and the complainant Somji and Devrambhai and panch No.1-Vasudevbhai proceeded to the office of the accused and the other members of the raiding party started walking on the road. At the office, Somji and other two i.e. Devrambhai and Vasudebhai were welcomed by the accused. They were asked to sit. After completing the work of some other persons, the accused enquired whether the amount is brought or not. The complainant replied that he could not arrange the full amount but brought little less money. The accused refused to accept the amount. Then the complainant took out the muddamal amount from his trouser pocket and handed it over to the accused. On being asked as to when the complainant will get the order, the accused replied that “day after tomorrow they will get the order”. The accused accepted the amount and put the same in his rear

trouser pocket. At this moment, signal was given and the members of the raiding party rushed to the office of the accused and carried out the trap. Mr J.A. Patel introduced himself as Police Inspector of ACB and he instructed the accused not to move. Mr J.A. Patel enquired from the accused his name, address, designation etc. After obtaining this information, in the presence two witnesses-the complainant and Devrambhai, Panch No.1 took out the smeared currency notes from the right rear trouser pocket the accused and experiment was carried out in the light of ultra violet lamp and marks of anthracene powder were noticed on the currency notes, on the right hand of the accused, on the border of the bush shirt and border of the rear trouser pocket of the accused. The numbers of the notes were tallied with the numbers mentioned in the first part of the panchnama. Stains of anthracene powder marks were seen on the notes of Rs. 20/- as well as on the note of Rs. 2/- denominations as well as the right hand of the accused. The other currency notes not bearing any anthracene powder mark were collected from the accused and returned to the

complainant. Thereafter those notes and trouser and shirt were also seized under panchnama. Seizure memo was prepared and raid was concluded.

5. After recording the statements of some of the witnesses, investigation papers were sent for sanction. On getting the sanction order, charge sheet was submitted. In Special Case No.9/90, charge was framed vide Exh.12 for the offences punishable under sections 13 (1)(d)(ii) read with section 13 (2) and under section 7 of Prevention of Corruption Act, 1988. The accused pleaded not guilty to the charge and claimed to be tried. In his statement recorded under section 313 of the Criminal Procedure Code also the case of the accused was of total denial.

6. The prosecution, in order to prove its case, has examined 4 witnesses namely,

(1) Somji Chhaganbhai, complainant Exh.19

(2) Devram Premji, witness Exh.24

(3) Vasudev Ambaram, Panch No.1 Exh.25

(4) Jayantilal Patel, I.O. Exh.23

7. P.W.1, complainant-Somji Chhaganbhai Patel, in his deposition has stated that agricultural lands situated at Dehgam are in his father's name and he is cultivating the said land. The survey numbers of the said lands are 227 and 231. The case in respect of the said land was pending before the Agricultural Tribunal. The accused Mr Darji was conducting the said case as Mamlatdar & A.L.T. That the incident is of about 6 to 7 years ago. On receipt of a notice under section 84 [C], he, along with Devrambhai, his neighbour went to the office of the accused. Upon asking about the case, the accused told them that he will find out some way for which certain amount is to be given. He told them to pay Rs.1000/-. He told that he does not have money at that time and after some time they again met the accused. At that time, Darji Saheb told “first of all do whatever you were told earlier, your work will be done.” As the complainant purchased the land in question with proper permission of Prant Officer, he did not want to give

any bribe to the accused. He could not remember the date when they came to Ahmedabad. On 19.9.1989 and 20.9.1989, he along with Devrambhai approached the Anti-corruption Bureau, Ahmedabad to lodge complaint. The ACB, on getting the complaint, took his signature and told him to bring Rs. 1000/- in the denomination of currency notes of Rs.100/-. The officer Mr Patel introduced two panch witnesses to them. Thereafter one glass bottle containing some powder was brought. Then powder was applied on the currency notes and showed the notes to the complainant and asked whether he could see. They replied in negative. Then a torch was brought and light of battery was thrown on the said notes. And then they could see the shining powder on the notes. The said notes were kept in the complainant's rear right pocket of the pant. He was instructed to hand over the said notes if demanded by Darji Saheb. Then the ACB officers, Panch, the complainant and Devrambhai all proceeded by jeep and they stopped near the bus station. The complainant and Devrambhai and one person of the ACB accompanied them to the office of the accused. He was

instructed that if the money is demanded and upon receiving, he should send signal about the acceptance of money by scratching his head.

8. They reached the office and the accused talked about the case. The accused asked whether the arrangement as said by him has been made. The complainant told him that he had brought little less money than demanded. On refusing to accept less money, the complainant took out the money from his rear pocket with his right hand and the amount was received by Darji Saheb and kept in his rear pocket of his pant. Then he got up and went near the door and sent signal by scratching his head head. Soon the officer of ACB came and caught hold of the hands of the Mamlatdar-accused and thereafter panchnama was prepared by the officers of ACB. The notes were taken out from the pocket of the Mamlatdar and light of battery was again shown on the currency notes, as was done in the office of ACB earlier. Upon throwing light the shining powder was seen. The shining powder was also seen on the hand of the Mamlatdar Saheb. The pant and shirt of the

Mamlatdar were taken into possession by the officers of the ACB. He did not remember whether any other articles were seized by the officer of ACB.

9. P.W. 2, Devrambhai in his deposition has stated that he is residing at village Dehgam, he is the owner of about 20 acres agriculture land adjacent to the agricultural land of Somji Chhaganbhai. That Somji went to him for his advice on the Tenancy Cases pending before the Mamlatdar Krishi Panch. He explained the difficulties and about the demand of money by the Mamlatdar. He along with the complainant visited the office of the accused on 15.9.89. On asking about the case of the complainant, the accused replied that his case will be solved and told him to meet after some time. Somji told him that the visit was in connection with the case only. Then, the accused asked him as to “what is to be done?”. The accused demanded Rs.1000/-. The complainant requested to reduce some amount as that was 'off season' and he was in financial difficulties. But the accused did not agree and told that Rs.1000/- must be given. Then,

the complainant replied that he will come after 4-5 days after making arrangement. After coming out of the office, Somji told PW 2, Devrambhai that he does not wish to give money and asked him as to what can be done. Thus, they both went to ACB office to get advice and lodged complaint on 25.9.1989. The ACB office, after following all the procedures, they laid the trap. As per the instruction, the complainant and this witness reached the office of the accused. The complainant asked the accused about his case. Mr Darji, the accused replied that his case has been sent to higher officer and the matter will be solved but the complainant would have to give the money as agreed. At that time, Devrambhai requested the accused to reduce some amount as Somji's financial condition was not good, but the accused insisted that the full amount should be given. The complainant took out the money from rear right pocket and offered money to Mr Darji, the accused. He took the said amount and kept in the rear pocket of his pant. Then the complainant sent signal outside as planned. The officers of ACB standing outside came there, introduced themselves

and asked the accused not to move. Thereafter, on looking at the hands of the complainant and accused in day light, nothing was seen, but after closing all the doors upon seeing the hands of the accused and complainant under the light of the ultra violet lamp, shining powder was seen. Then the panch No.1 took out money from the pocket of Mr Darji and verified all the notes smeared with anthracene powder. They verified the notes which were recorded in the panchnama. The currency notes were taken into possession by the officers of the ACB. He was shown the muddamal article notes after comparing the numbers and he confirmed them which were seized by the ACB Officers.

10. PW 3-Vasudevbhai Patel has, in his deposition supported the version given by PW 2, Devrambhai. He has narrated the entire episode in the same way Devrambhai did. The other Prosecution witnesses also stuck to their version as PW 2 has given. All the witnesses have given the same version in their cross-examinations also.

11. The defence of the accused is of total denial that he had never demanded the amount and absolutely false case is made out at the instance of Devram who was the leader of Kisan Sangh and he acted as the Advisor of the complainant-Somji. It is the case of the accused that there is no conclusive evidence that he demanded the amount.

12. Heard Mr K.B. Anandjiwala, learned advocate for the appellant and Ms. Archana Raval, learned APP for the respondent-State.

13. Learned advocate Mr K.B. Anandjiwala for the appellant-accused argued that initially there was no demand of bribe as per the deposition of PW.1-complainant Somji and PW 2, Devrambhai. He has pointed out that the learned APP has fairly admitted before the trial court that initially there was no demand of bribe. It may be noted that both, the witness and the complainant are coming from a small village and they are illiterate persons. They are not aware of the procedure of the court. It is also pertinent to note that after a lapse of 6 to 7

years after the incident took place, they deposed before the court and hence some discrepancies are bound to be there in the evidence of both these witnesses. On going through the evidence of the complainant, Somji, PW 1 and Devrambhai, PW 2, carefully and minutely, it transpires that both the witnesses specifically stated that demand was made from the beginning when they went to the office of the accused person. In cross-examination of the complainant, he stated that he was not willing to pay the amount of bribe as he has purchased the land after obtaining legal permission from the competent authority. Hence he went to the office of the ACB and asked them to do something. According to the evidence of this witness, the ACB Officer who was present at that time asked him to come with the currency notes which were demanded by the accused and also give the details about the time and place and the amount which was to be paid to the accused. As the date, time and place were not fixed, they again went to the office of the accused and the accused told them to come on 25.9.1989 in his office at a particular time. When they fixed the

date, time and place where they have to pay the money of bribe to the accused, it cannot be said that initially there was no demand. As referred to above, when the witnesses are from village and they are illiterate, it is not expected of them to remember on which exact date the demand was made by the accused. Deposition of PW 1 and PW 2 the complainant and witness respectively, is very natural and in their own way they narrated the whole incident which took place between them and the accused person. Hence there is no substance in the argument of Mr Anandjiwala that initially there was no demand.

14. Mr Anandjiwala vehemently argued that the order in favour of the complainant was passed by the accused on 18.9.1989 before the trap was arranged and hence the question of demand of bribe does not arise as the order has already been passed by the accused in favour of the complainant. This argument also has no substance because it has come out from the evidence of the PWs that when the complainant went to the office of the accused, the accused told

him that the order is passed and he showed the order to the complainant but did not hand over the same to him. It is an admitted fact that till 25.9.1989, the order was not sent by post or by any other mode of transmission. No doubt, the order was passed on 18.9.1989 in favour of the father of the complainant in connection with the tenancy case, as the complainant has agreed to pay the amount of Rs. 1000/- for passing the said order.

15. In this case, on going through the entire evidence on record, it is crystal clear that in consideration of illegal gratification of Rs.1000/- which was agreed by the complainant, the accused has passed order in favour of the complainant but it was kept in the office and not forwarded till the trap was arranged obviously because he has not got the amount as demanded. This would clearly show that the demand was made by the accused. When the 'demand and acceptance' by the accused was proved and he was caught red handed during the trap, the question of there being no demand does not arise. It is pertinent to note that the witness and the

complainant both hail from small village and are illiterate persons and when they deposed before the court some discrepancies are bound to occur in their evidence. There is no substance in the argument of Mr Anandjiwala that as the order was passed by the accused on 18.9.1989, i.e. prior to the trap, the question of demand does not arise. In this regard, the view of this court is fortified by the decision taken in the case of ***State of Andhra Pradesh v. R. Jeevaratnam (2005 AIR SCW 3132).***

16. The learned advocate further submitted that the panch witness No.1-Vasudevbhai has not specifically stated in his deposition that any demand was made by the present accused which is also fatal to the case of the prosecution. I have gone through the evidence of Vasudevbhai. He has stated on oath before the court that Devram asked the accused to reduce the amount and the accused refused to do so. Then immediately the complainant took out the smeared currency notes from his pocket and handed over to the accused and the accused

accepted the same. This clearly shows that the accused demanded bribe, and if demand was made, then only the question of reducing the same would arise. As far as the other part of the panchnama is concerned, Panch Vasudevbhai is not shaken in his evidence and stuck to his version made in the panchnama which totally corroborates with the deposition of PW 1 and PW 2 and, hence, there is no substance in the arguments advanced by Mr Anandjiwala that this witness has not specifically stated that the accused demanded bribe. On the contrary, in the evidence of the complainant, PW 2, Devrambhai and Panch-Vasudevbhai and the Investigating Officer, it was specifically stated that after applying anthracene powder on the currency notes, there was no change in the colour when seen in normal light. However, light brown glare was seen in light of ultra violet lamp.

17. Mr Anandjiwala has further submitted that panch witness Vasudevbhai has not stated in his evidence that the panchnama was prepared as per his instructions and in his own words, but there is no

substance in this argument also because this witness has categorically stated in his evidence that the whole incident from the beginning to the end was narrated in the panchnama and detailed panchnama was prepared. According to the evidence of the Investigating Officer Mr Patel also the panchnama was prepared as per instructions of the panchas and there is no reason to disbelieve both these witnesses and they are independent witnesses and they have no enmity with the present accused. Merely because it was stated by panch witness Vasudevbhai that panchnama was not prepared as per his instructions, it could not be said to be fatal to the case of the prosecution. Panchnama Exh.26 is proved beyond reasonable doubt in favour of the prosecution.

18. Mr Anandjiwala has relied upon a judgment delivered by this court (Coram: J.R. Vora, J.) in the case of ***K.D. Patel v. The State of Gujarat*** (2007 (1) GLH 441. While agreeing with the ratio laid down by this court in the said judgment, it is to be noted that the facts of that case is totally

different from the case on hand and, hence, that authority is not applicable to the present case.

19. Section 20 of the Act provides that where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13,.....

... ...

...

if the amount was accepted by the accused and if it is proved, then the burden is on the accused to prove that he was falsely implicated in the case.

As discussed above, it is clear that the demand was made on three occasions - before lodging of the complaint, after lodging of the complaint and during the time of the trap in the presence of the panch witnesses. In furtherance of the demand, the complainant handed over the currency notes which was accepted by the accused and he was caught red handed during the trap and ample evidence in this regard is

produced by the prosecution and ingredients of 'demand and acceptance' was proved beyond reasonable doubt by the prosecution. The accused had denied the allegation made by the complainant but he has not produced any evidence to prove his innocence. He has only stated in his further statement that as the complainant was harrassed by his predecessor Mamlatdar Mr Bhavsar, he was falsely implicated in the case. There is no substance in this allegation as the accused was caught red handed with bribe amount by the ACB and he has not produced any evidence which would lead to the conclusion that he was falsely implicated. It is pertinent to note that there was no enmity between the complainant and the accused or between the panch witnesses and the ACB officers. Hence the question of falsely implicating the accused by these persons does not arise.

20. So far as the argument of Mr Anandjiwala that from the evidence it has come out that PW 2 Devram was leader of Kisan Sangh and as per his instructions, the complainant acted and involved the

present accused in false case is concerned, it is admitted by PW 2 that he was member of Kisan Sangh and the trial court has rightly held that merely because he was a member of Kisan Sangh, it could not be said that he was leader in the village. It is rightly held by the trial court that nothing has come out on record to show that PW 2 Devrambhai has any enmity with Mamlatdar Krishi Panch. It is not denied by the accused that the agricultural land of Devram is near the land of the complainant. It is quite natural that the complainant being illiterate and from a small village took assistance of his neighbour when he went to the office of the accused in connection with his tenancy case. There is nothing wrong in that and Devrambhai must have gone with the complainant as a neighbour and not in the capacity of a leader of any such Sangh. In this regard, he has relied on a decision of the Hon'ble Supreme Court in the case of ***Bharatkumar Jaimanishanker Mehta v. State*** (1982 (1) GLR 605) on the question of choosing of a person as panch in corruption case, wherein at para 11 it has been held that it is necessary that great care should be

taken by the investigating agency to choose a proper person whose integrity and whose reliability cannot be doubted. In the present case, deposition given by ACB Inspector has got support of panch witness Vasudev Patel, complainant and witness Devram and the panchnama vide Exh.26 and there is no procedural illegality/infirmity and no corroboration is also necessary.

21. Mr Anandjiwala has then relied upon a decision in the case of ***Ambalal Motibhai v State*** (1960 (1) GLR 113) on the test to prove use of anthracene powder in the case. He stated that the anthracene powder cannot be seen except under the light of the ultra violet lamp and no such test was taken and if a person agreeing to pay a bribe, his evidence requires to be corroborated independently. In the above case, it was held by the court that "the two tests required to be satisfied by the prosecution to prove the presence of anthracene powder are (1) that no powder was detected with the naked eye and (2) that when ultra violet light was focussed, there was emission of light blue

flourescent light. That, the courts must always weigh the evidence with particular caution, and if after scrutinising the evidence of an interested witness, the court finds it safe to accept such evidence, then independent corroboration is not necessary.” Hence the above case will not be of any assistance to the appellant.

22. He has further relied upon a decision in the case of ***State of Himachal Pradesh v Tejram*** **(1990 Cr.L.J. 995)** on the question of demand of bribe amount. The said decision stresses inevitability of strict and clear-cut proof of demand of bribe amount and if such proof is not satisfactory, then the result of the case of prosecution will be contradictory. The prosecution should lead evidence to the effect that transaction of currency notes took place between the accused and the complainant.

23. Mr Anandjiwala, finally argued that the learned Special Judge has committed error by not taking into consideration the major contradictions

in the evidence of witnesses which is fatal to the case of the prosecution. He, therefore, submitted that the present appeal deserves to be allowed. Lastly, Mr Anandjiwala submitted that if this court come to the conclusion that the appellant is held to be guilty, a lenient view should be taken while awarding the conviction and sentence and reduce the sentence awarded. He also submitted that the appellant has already undergone 22 days in prison and he has gone through hard days in his life during the pendency of this litigation. He submitted that the appellant also lost his job and the court should consider sympathetically the question of reduction of sentence as the appellant has already been sufficiently punished. This argument cannot be accepted as the learned Special Judge awarded the minimum sentence in accordance with law considering section 13 (2) of the Act, and hence, the sentence cannot be reduced.

24. Learned APP submitted that the prosecution has proved its case beyond reasonable doubt in favour of the present accused. The prosecution has

proved the initial demand by the accused and established the pre-acceptance conversation and the conversation during the time of acceptance of the bribe. It is submitted that there is cogent and convincing evidence with regard to the anthracene powder marks inside the pocket of the trouser of the accused and that the accused demanded the illegal gratification and accepted the bribe. The learned APP argued with emphasis that the accused was a Government servant at the relevant time and he was caught red handed during the trap. He also submitted that in the evidence of witnesses no contradiction was found. Hence no interference is called for by this court.

25. In support of her case on minor discrepancies in evidence, learned APP has placed reliance on a decision in the case of ***Gokuleshwar Banerjee v State of Jharkhant (2005 Cr.L.J. 1535)*** wherein it was held that if minor discrepancies in evidence of prosecution witnesses do not cast any cloud of suspicion to the credibility of prosecution case, no infirmity can be said to have been

committed by the competent authority in passing sanction order for prosecution of the accused.

26. I have considered arguments of the learned advocate for the appellant and the learned APP for the State from all angles as also gone through the judgment and order passed by the learned Special Judge. I have no hesitation in holding that the accused demanded money from the complainant for disposing of the Tenancy Case and the money was accepted by the accused in presence of Devrambhai, PW 2. The learned Special Judge has elaborately discussed the entire evidence on record in great details, perused the evidence of the witnesses in its right perspective and convicted the present accused. Thus no illegality or infirmities are found in the findings arrived at by the trial court. There is no reason to interfere with the findings arrived at and the reasons assigned by the lower court in passing the impugned judgment and order of conviction and sentence. Suffice it to say that I am in complete agreement with the views expressed by the lower court. In that view of the matter, this

appeal is liable to be dismissed.

27. In the result, the appeal stands dismissed. The impugned judgment and order dated 30.8.1996 passed by the Special Judge, Ahmedabad (Rural), Ahmedabad in Special (ACB) Case No.9 of 1990 stands confirmed. Bail bonds stand cancelled. The present appellant-accused is directed to surrender before the jail authority within 42 days from today.

[M.D. SHAH, J.]

FURTHER ORDER

28. After pronouncement of the judgment, Mr K.B. Anandjiwala submitted that the accused is 71 years old, and during the trial period, he has been passing through miserable life on account of his persistent illness. The accused is suffering from heart disease and he underwent coronary angiography and he is still under medical treatment. Copy of the certificate issued by Dr. Parvinder Singh, Interventional Cardiologist, Baroda Heart Institute and Research Centre, Vadodara is produced on

record. He requests that taking into consideration all these aspects, the court should consider sympathetically the question of reduction of sentence as the appellant has already been sufficiently punished.

29. The question of reduction of sentence has already been dealt with by me in para 23 of this judgment. Hence the said prayer is rejected. The accused shall be entitled to the benefit of set off of imprisonment already undergone, under section 428 of the Code of Criminal Procedure, 1973.

[M.D. SHAH, J.]

msp